The case of Corker v. Soper, 53 Fed. (2d) 190, wherein the Circuit Court of Appeals for the Fifth Circuit held that where a bank president organized a corporation to hold shares of bank stock as his mere instrument or agency he also will be liable for assessments on the bank stock, is a case in which the corporation was a mere sham with only a nominal capital of $10 and never transacted any business on its own account whatever. The facts regarding the organization of the company are stated as follows in the opinion:

> "The facts as to the Laurens Company and its organization are: On February 3d the charter of the Laurens Investment Company, Inc., on a petition filed December 27, 1927, was issued, with an authorized capital stock of $10, Corker and his two sons incorporators. On the next day the capital stock was subscribed for, by-laws were adopted, the subscription of F. G. Corker as agent for the Laurens Company to 150 shares of the Dublin Bank stock was ratified, and it was resolved that the Laurens Company purchase Mrs. Corker's stock in the bank, and that of appellant, except 21 shares which he retained to qualify him as a director in the bank; and that it give to appellant and his wife notes dated back to January 5, 1928, bearing interest at 8 per cent., representing the par value of 156½ and 28 shares respectively, making up the total of 184½ shares which stood in the name of the Laurens Company. The January dividends already paid were credited on these notes. No other corporate action was ever taken by the Laurens Company, its stockholders, or its officers. It issued no stock certificates, kept no books, had no seal. The only money it ever possessed was the $20 paid by appellant for organization expenses. It claimed no assets, except the stock in its name; it had no credit; the money with which the stock was purchased was acquired entirely upon the credit of appellant. No record except the credit on the back of the notes was ever made of the receipt by it of dividends. It was organized for the sole purpose of owning the bank

> stock, pursuant to the idea of appellant that its organization and the placing of the stock in its name would prevent his being liable for stock assessments.
>
> "There is no evidence in the record of any activity of Laurens Investment Company except in name. Every transaction had by or with reference to it was managed, controlled, and directed by appellant, and it functioned entirely as an agency or instrumentality of his. * * * "
>
> (page 191)

There were allegations in the bill that the stock was placed in the name of Laurens Investment Company fraudulently for the purpose of avoiding liability at a time when the bank was insolvent or in danger of becoming so and this would seem to be the true ground for holding the bank president liable. Unfortunately, however, these allegations were abandoned at the trial and the Court was forced to find some other theory upon which to base liability. It did so by the following rather peculiar line of reasoning:

> "Appellant's troubles do not arise from the fact that the corporate entity of the Laurens Company has been disregarded. The judgment of the court below fully recognized and gave effect to that entity. It found that, though it did in fact exist, it existed as a mere creature organized and maintained for the purpose of holding, not really, but as agent for appellant, the stock which he caused to be put in its name, that appellant at all times remained the real owner of the shares, and that the law will look through the subterfuge of pretended ownership to fasten liability upon the shareholder to whom, in fact, the shares belong.

> "The view which the court below took, and which we take, does not require, in fact, it prevents, the conclusion that the corporation in this case was a fiction, having no corporate existence. In this view, the judgment, thoroughly consistent with itself, stands upon the sound foundation on which alone a just disposition of this case may rest. It correctly gives effect to the general intent of appellant to create a corporation for the purpose of placing in its name his and his wife's stock in the bank, because what was done made that intent effectual. It with equal correctness denies effect to the particular intent which induced him to act as he did, to avoid liability on the stock, because the things done by appellant were not in accord, but wholly inconsistent, with that intent. For while the things done did place the certificates of stock in the name of the Laurens Company, they did not divest appellant of his beneficial ownership of them, but left him the real owner, and therefore liable to assessment."
>
> (Page 192)

In other words, although the Court recognized the separate corporate entity of the holding company, it held that in fact the holding company was not a real stockholder of the bank, but was the mere agent or instrumentality of the bank president. This is quite different from holding that a shareholder in a bona fide holding company is a shareholder in a bank whose stock is owned by such holding company.

Moreover, the case is easily distinguishable from that of the Eccles Investment Company, which is a bona fide corporation organized over twenty years ago, and which owns a large variety of investments, including real estate, bonds, notes, and stocks of corporations engaged in widely diversified types of business.